

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1089 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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K N NARAYAN

Versus

STATE OF GUJARAT

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Appearance:

MR AM RAWAL for Petitioner

MR VB GHARANIA, AGP for Respondent No. 1, 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/08/1999

ORAL JUDGEMENT

#. How after entry in the service of the Government, the employees make all sort of attempts to get their recorded date of birth corrected is a matter which clearly exhibited from this Special Civil Application.

#. The petitioner entered in the services of the respondent State in its Geology & Mining Department as a Class IV employee in the year 1962. In his school leaving certificate 8/7/37 is date of his birth. He was admitted in the school on 6/5/46. On the basis of this certificate in his service record 8/7/37 is his recorded date of birth. On 2/12/91 after about 29 years of his entry in service he filed an application to the respondent for correction in his recorded date of birth in the service record and claimed his date of birth as 10/11/41. So he wanted to get a jump of about 4 years in the service. This change in his recorded date of birth is sought on the basis of certificate of the President of the Gram Panchayat dated 3/8/91. This application was came to be rejected under the order of the respondent dated 17/2/92 Annexure-B and this order has been challenged by the petitioner in this Special Civil Application. This Special Civil Application is filed by the petitioner in the court on 24/6/94 i.e. after more than 2 years and 4 months of the rejection of his this application for correction of his recorded date of birth by the respondent.

#. The learned counsel for the petitioner contended that the ground given by the respondent for rejection of his application is wholly arbitrary and unjustified. It has next been contended that in his service book his date of birth has wrongly been recorded as 8/7/37 on the basis of the school leaving certificate, in which his date of birth has incorrectly recorded. He stated that on the face of it is incorrect as nobody will get admission in the school after 9 years of his birth. Lastly it is contended that it is a case of class IV employee and as the petitioner is not fully educated and his recorded date of birth may be ordered to be corrected.

#. On the other side the learned counsel for the respondents strongly opposed this Special Civil Application. They filed reply to this Special Civil Application also.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. The petitioner is disputing his date of birth as recorded in his school leaving certificate on 6/5/46. This is petitioner's own document on the basis of which he would have got himself appointed in the government services and this is the basis of the recording of 8/7/37 as his date of birth in his service book. This is the

petitioner's own document on the basis of which his date of birth is recorded in his service book by the respondents and this action of the respondents cannot be said to be illegal or arbitrary. The petitioner was entered in the government service on 19/6/62 and if he considers that his date of birth is wrongly recorded in the service book, he has right to file application for correction thereof but within 5 years of his entry in the service. This has not been done. The respondents have not committed any error in rejecting the application of the petitioner which is admittedly been filed after 5 years of the entry in the service. After about 34 years of his entry in service the petitioner now claiming for the correction of his recorded date of birth and that too on a certificate of the President of Panchayat which can easily be available on request. How on the basis of the certificate of President of Panchayat the petitioner's date of birth recorded in his school leaving certificate would have declared by his parents can be corrected. If on such a certificate the recorded date of birth of the employees/officers are to be corrected in the service record and more so where the same has been recorded on the basis of the petitioner's own document, it will open flood gate for corruption, favouritism etc. The document on which the petitioner claims for correction of his recorded date of birth is very very weak evidence and on the basis of the same his date of birth shown in his school leaving certificate cannot be taken to be incorrect.

#. The certificate of the President of the Gram Panchayat is on the record as Annexure-A of this Special Civil Application, which reads as under :

"Certified that Shri Kunnathuparambil Narayanan, son of Manikutty born in Manavalassery Village, Thanissery Desom, on 10.11.1941 (Ten-Eleven-Nineteen Forty One) and he is aged 50, to the best of my knowledge. Also certify that he is a native of Manavalassery Village and his Religion is Hindu and Caste Ezhava."

Even the president of the Panchayat himself was not sure of date of birth of the petitioner. He has given this certificate on the basis of his knowledge and I fail to see how this evidence can be taken to be a conclusive piece of evidence sufficient to make correction in the date of birth of the petitioner recorded in his school leaving certificate. The

petitioner has not produced any evidence on the record of this Special Civil Application to show and establish that by mistake of some other person in his school record his date of birth wrongly recorded. The petitioner's date of birth in the school leaving certificate would have been and should have been recorded on the basis of the declaration made by his parents or some of his close relations and that date of birth has not been doubted by the petitioner at any point of time from 1946 to 1991. The petitioner has left the school in the year 1950 and he has not made any attempt to get it corrected and rightly so because that date of birth of his was correct in the school record.

#. The employee, who is seeking the correction in his recorded date of birth has to show that the date of birth recorded in service record was made due to negligence of some other person or that the same was obvious clerical error. When the employee fails to do so no relief can be granted to him by this court sitting under Article 226 of the Constitution. Fruitfully the reference here may have to the decision of the apex court in the case of Commissioner of Police, Bombay Vs. Bhagwan U. Lahane 1997 SCC (L&S) 719. In the matter, relating to appointment to service various factors are taken into consideration before making a selection or appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It is not unreasonable to presume that when a candidate, at the first instance, communicate a particular date of birth, there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for that post. Where maturity is one of the relevant factor to assess the suitability, an older person ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against the public policy to permit such a change to enable longer benefit to the person concerned. This being so, it is difficult to accept that broad proposition that principle of estoppel would not apply in such a case where the age of a person, who is sought to be appointed may be a relevant consideration to assess the suitability. Possibly age would have been a consideration for his selection in this case.

#. The alternation or correction in the recorded date of

birth of an employee is permissible only in accordance with the procedure prescribed by rule or order. Where the rule provides that prayer for alternation / correction of recorded date of birth would be entered within 5 years after entering in the service should be strictly followed and in case this application is not filed within limitation prescribed it could have been rejected only on this ground. In the case in hand from the order of the respondent, I find that the application of the petitioner has been rejected on the ground that he has not filed the application within limitation. The petitioner admits that this application has to be submitted within 5 years but what he contends referring to para 4 of Government resolution dated 11/8/89 where the Government feels that where there is a mistake in the entered date of birth the application for change of date of birth can be entertained at a later stage and the date of birth can be rectified. This provision is not of any help to the petitioner for the reason that in the recorded date of birth there is no mistake. This date of birth of the petitioner is recorded in his service record on the basis of document produced by himself i.e. the school leaving certificate. It is not the case of the petitioner that there is any mistake in his birth date given in his school leaving certificate and recorded on the basis of which in his service record. In fact it is an attempt of the petitioner at this stage to challenge the correctness of his own document SLC. What he is pleading that in school leaving certificate his birth date has incorrectly been recorded. How in these facts it is justified for the petitioner to reply on this resolution.

##. The paragraph 4 of Government Resolution dated 11/8/89 is attracted in a case where though the document is produced but by mistake the date of birth giving therein has not been correctly recorded in the service record of the employee. This clause will not cover the case where the petitioner is claiming correction in his recorded date of birth which is correctly recorded as given in the school leaving certificate. The respondents in these facts have not committed any error in rejecting the application of the petitioner on the ground of limitation. The reference here may have to the decision of the apex court in the case of State of Orissa Vs. Brahamarbar Senapati (1994) 27 ATC 110 and this matter is squarely covered by this decision.

##. The learned counsel for the petitioner made the submissions on merits of the matter but the petitioner has no case on merits. In the case of State of Tamilnadu

Vs. T.V. Venugopalan (1994) 28 ATC 294 the Lordships of Supreme Court held that inordinate delay in making the application is itself a ground for rejecting the prayer for correction of the recorded date of birth. A government servant having been declared his date of birth as entered in the service register, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register. The court has further observed it is common phenomenon that just before superannuation, an application would be made to the tribunal or court just to gain time to continue in service and the tribunal or courts are unduly liberal in entering and in allowing government employees or public employees remain in the office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. The reference may have to another decision of the apex court in the case of Secretary and Commissioner, Home Department Vs. R. Kirubakaran AIR 1993 SC 2647. Their Lordships of the apex court held that the application for correction of the date of birth in the service record has to be made by employee-officer within the time fixed by a rule or order. However where a time limit is not fixed for filing of such application then it should be made within a reasonable time. In that case the application has been filed for the correction of date of birth after 33 years of the service and the apex court held that on such belated application the tribunal ought not to have been granted the relief. Here in the present case the petitioner entered in the government service in the year 1962 and he filed this application for correction in the recorded date of birth only in 1991 i.e. after about 29 years. This long delay in filing of the application itself is sufficient for rejection of the same. The reference may have to another decision of the apex court in the case of Union of India Vs. Ram Suia Sharma 1996(7) SCC 421 where the application of the respondent therein for correction of date of birth was rejected only on the ground of laches and delay. The claim for correction of recorded date of birth has been lodged by the respondent therein after 25 years of joining the service. In that case the tribunal was allowed the claim of the employee but the apex court has held the decision of the tribunal of the correction of his date of birth recorded in the service record after 29 years to be illegal. In this case as said earlier the application for correction of the date of birth has been made by the petitioner after 29 years of the entry in the service and this his claim deserves to be rejected only on the ground of delay and laches. The reference may have yet to

another decision of the apex court in the case of Burn Standard Company Ltd. and Ors. Vs. Dinabandhu Majmudar and Anr. 1995(4) SC 172.

##. Onus is on the petitioner to prove the wrong recording of date of birth in his service book. The petitioner has to produce the evidence and/or material in support of his claim from which the irrefutable conclusion follows that date of birth recorded in the record is incorrect. What the nature of the evidence required for the acceptance of the claim of the petitioner for the correction of his recorded date of birth, the reference may have to the observation of the Lordships of the Hon'ble Supreme Court made in the case of Secretary and Commissioner, Home Department Vs. R.Kirubakaran (Supra). The court said, if the date of birth of the public servant is corrected only on the basis of a report submitted by Revenue Officer after holding an inquiry it will introduce uncertainty, in public service. The correction of date of birth of the public servant is permissible, but that should not be done in a casual manner. Any such order must be passed on material produced by public servants from which the irresistible conclusion follows that the date of birth recorded in the service book was incorrect.

##. In this case the petitioner is relying for the correction of his date of birth on a document which could have been conveniently procured by him at any point of time. On the basis of this type of evidence, which the petitioner got for his own benefit no correction of date of birth can be ordered. In case on the basis of such evidence the corrections in date of birth are permitted then certainly it will open flood gates for corruption as well as manipulations. In the case of Commissioner of Police, Bombay Vs. Bhagwan V. Lahane (Supra) the Lordships of Supreme Court had not permitted the correction of date of birth recorded in the service book on the basis of extract from the birth register. The court held that in the absence of material to show that the entry in the SLC was incorrect and extract from the birth register even otherwise doubtful, the authority has rightly refused to correct the date of birth. Here also the petitioner failed to produce any evidence to show that his date of birth in school register was incorrectly recorded. Not only this the document on the basis of which he is seeking correction in the recorded date of birth is highly doubtful. The reference may have to another decision of the apex court in the case of Union of India Vs. Sarojwala, AIR 1996 SC 1000 where the Lordships of Supreme Court had declined to grant relief

as prayed for the correction of recorded date of birth on the basis of the discovered material. In the case of Dindayal Oza Vs. U.P. Public Service Commission, 1994 LLJ 337 (SC) the date of birth sought to be corrected on the basis of the age as shown in the discharge certificate issued by the authorities, was not accepted.

##. Taking into consideration the totality of the facts this is a clear case where the petitioner attempted to abuse the process of court. This petition is wholly misconceived. Despite of the settled position of law by apex court in such matters this petition filed by the petitioner through a very senior advocate of the court, which resulted in taking of precious and valuable time of the court is difficult to appreciate. Time and again this court said that the litigants and advocates should not act only for their interest and benefits. The approach should not have been self interest oriented but they have to look out or and consider the larger interest of the litigants. Crores of the litigants are waiting for the decisions in their cases and if indiscriminately writ petitions are being filed in the matter where in view of the catena of decisions of apex court as well as this court the litigants may not have a case, it will result in creating more problems and difficulties for the courts to manage disposal of cases.

##. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief granted by this court stands vacated. This is a case where exemplary costs are to be awarded against the petitioner and accordingly the petitioner is directed to pay Rs.2,000/- towards costs. Out of this Rs.500/- be paid to the State of Gujarat, as this much amount is paid by it to the AGP appeared in the case and the balance amount of Rs.1,500/- be deposited in National Defence Fund in any of the designated branch of the State Bank of India in Ahmedabad. The receipt of the deposit of this cost be produced on the record of this Special Civil Application.

(S.K.Keshote, J.)

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